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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,357	09/30/2005	Angeline Gopal	HO-P03142US0	3933
26271	7590	01/22/2009	EXAMINER	
FULBRIGHT & JAWORSKI, LLP			SAYALA, CHHAYA D	
1301 MCKINNEY				
SUITE 5100			ART UNIT	PAPER NUMBER
HOUSTON, TX 77010-3095			1794	
			MAIL DATE	DELIVERY MODE
			01/22/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/525,357	GOPAL, ANGELINE	
	<b>Examiner</b>	<b>Art Unit</b>	
	C. SAYALA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>10/28/2005</u> .	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over References CA or CB or CC or CD as cited in the IDS filed 10/28/2005 in view of Rahman et al. (US Patent 4109026) and further in view of Orthofoer (US Patent 4125630) taken with Fallon et al. (US Patent 3868470) and Savage et al. (US Patent 3228776).

The primary references teach dehydrated onion, dehydrated drumstick leaves, dehydrated sweet potato chips and dehydrated pumpkin and all teach using metabisulfite, either potassium or sodium, for treating these vegetables before dehydrating. They do not teach the other limitations. While these references do not teach the claimed moisture level, they do teach drying to a desired moisture level. (See Pawar, page 59, second col.). Akpapunam, abstract teaches drying by using optimum time and temperature in order to reach optimum quality. Such teachings render obvious the claimed moisture content depending on the vegetable and required quality. To find the optimum moisture content for these dehydrated products would have been within the realm of ordinary skill, based on the above guidance.

Rahman et al. teach dehydrating cabbage also by using sodium metabisulfite, treating with a surfactant and then dehydrating some more to a moisture content to less than 5% by weight. Note that Rahman does not teach the surface-active agents claimed herein.

Orthoefer teaches a number of surface-active agents that have been used in the food art to “plasticize” vegetable products. The reference disclosure teaches the use of their agents to impart “flexibility, resiliency and pliability”, which, one of ordinary skill in the art would recognize would impart the same to the dehydrated vegetables of the primary references as well, because one of ordinary skill in the art would recognize that the agents are surface-active agents or humectants as well.. The agents suggested are shown at col. 3, line 28+, such as sorbitol, honey or molasses which contains glucose, glycerol, oils such as vegetable oils, sunflower oil and tallow. See col. 4, line 27+. The reference does not teach the particular combination claimed, but it does teach all of the claimed agents. The amounts are shown at col. 5, line 56+, and to modify these amounts to the fact situation of the instant invention would have been obvious to one of ordinary skill in the art at the time the invention was made. To combine such agents all taught for the same purpose in a combination that would provide the required function for the particular vegetable being dried, would have been *prima facie* obvious.

The references of Fallon and Savage teach packaging vegetables separately. One is to dehydrated vegetables and the other to frozen vegetables, but to vegetables nonetheless, rendering obvious the embodiment of packaging vegetables separately. None of the references teach that the vegetables are intended for pets, however, if the

vegetables are packeted for humans, then to package it for animals would be an obvious embodiment, a human being the epitome of an animal.

***Claim Rejections - 35 USC § 102/Claim Rejections - 35 USC § 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 17-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fallon et al. (US Patent 3868470) or Savage et al. (US Patent 3228776).

Both patents teach vegetable matter. Both teach vegetables in a separate package. “For pets” is use terminology and for composition claims, intended use of an otherwise old or obvious composition cannot render a claim patentable. *In re Zierden*, 162 USPQ 102, *In re Jones*, 50 USPQ 48, *In re Spada*, 15 USPQ 2d, 1655, *In re Thuau* 57 USPQ 324.

Furthermore, applicants' claim is written in a product-by-process format and as such, it is the novelty of the instantly claimed product that needs to be established and not that of the recited process steps. *In re Brown*, 173 USPQ 685 (CCPA 1972); *In re Wertheim*, 191 USPQ (CCPA 1976).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/  
Primary Examiner, Art Unit 1794**